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8  
9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. **2010-384**

12 **MARK WESTON MOFFATT**  
13 **2750 E San Juan Rd**  
14 **Palm Spring, CA 92262**

**ACCUSATION**

15 **Registered Nursing License No. RN 356612**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
21 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department  
22 of Consumer Affairs.

23 2. On or about March 31, 1983, the Board of Registered Nursing issued Registered  
24 Nursing License Number RN 356612 to Mark Weston Moffatt (Respondent). The Registered  
25 Nursing License was in full force and effect at all times relevant to the charges brought herein and  
26 will expire on December 31, 2010, unless renewed.

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## JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the board may renew an expired license at any time within eight years after the expiration.

## STATUTORY PROVISIONS

6. Section 2761 of the Code states:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

....

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

7. Section 2765 of the Code states:

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions and duties of a registered nurse is deemed to be a conviction within the meaning of this article. The board may order the license or certificate suspended or revoked, or may decline to issue a license or certificate, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

1 8. Section 482 of the Code states:

2 Each board under the provisions of this code shall develop criteria to  
3 evaluate the rehabilitation of a person when:

4 . . . .

5 (b) Considering suspension or revocation of a license under Section 490.

6 Each board shall take into account all competent evidence of rehabilitation  
7 furnished by the applicant or licensee.

8 9. Section 490 of the Code states:

9 (a) In addition to any other action that a board is permitted to take against a  
10 licensee, a board may suspend or revoke a license on the ground that the licensee  
11 has been convicted of a crime, if the crime is substantially related to the  
12 qualifications, functions, or duties of the business or profession for which the  
13 license was issued.

14 (b) Notwithstanding any other provision of law, a board may exercise any  
15 authority to discipline a licensee for conviction of a crime that is independent of  
16 the authority granted under subdivision (a) only if the crime is substantially related  
17 to the qualifications, functions, or duties of the business or profession for which  
18 the licensee's license was issued.

19 (c) A conviction within the meaning of this section means a plea or verdict  
20 of guilty or a conviction following a plea of nolo contendere. Any action that a  
21 board is permitted to take following the establishment of a conviction may be  
22 taken when the time for appeal has elapsed, or the judgment of conviction has been  
23 affirmed on appeal, or when an order granting probation is made suspending the  
24 imposition of sentence, irrespective of a subsequent order under the provisions of  
25 Section 1203.4 of the Penal Code.

26 (d) The Legislature hereby finds and declares that the application of this  
27 section has been made unclear by the holding in *Petropoulos v. Department of*  
28 *Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has  
placed a significant number of statutes and regulations in question, resulting in  
potential harm to the consumers of California from licensees who have been  
convicted of crimes. Therefore, the Legislature finds and declares that this section  
establishes an independent basis for a board to impose discipline upon a licensee,  
and that the amendments to this section made by Senate Bill 797 of the 2007 -08  
Regular Session do not constitute a change to, but rather are declaratory of,  
existing law.

10. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a  
board within the department pursuant to law to deny an application for a license or

1 to suspend or revoke a license or otherwise take disciplinary action against a  
2 person who holds a license, upon the ground that the applicant or the licensee has  
3 been convicted of a crime substantially related to the qualifications, functions, and  
4 duties of the licensee in question, the record of conviction of the crime shall be  
5 conclusive evidence of the fact that the conviction occurred, but only of that fact,  
6 and the board may inquire into the circumstances surrounding the commission of  
7 the crime in order to fix the degree of discipline or to determine if the conviction is  
8 substantially related to the qualifications, functions, and duties of the licensee in  
9 question.

10 As used in this section, "license" includes "certificate," "permit,"  
11 "authority," and "registration."

## 12 REGULATIONS

13 11. California Code of Regulations, title 16, section 1444, states:

14 A conviction or act shall be considered to be substantially related to the  
15 qualifications, functions or duties of a registered nurse if to a substantial degree it  
16 evidences the present or potential unfitness of a registered nurse to practice in a  
17 manner consistent with the public health, safety, or welfare.

18 12. California Code of Regulations, title 16, section 1445, states in pertinent part:

19 .....

20 (b) When considering the suspension or revocation of a license on the  
21 grounds that a registered nurse has been convicted of a crime, the board, in  
22 evaluating the rehabilitation of such person and his/her eligibility for a license will  
23 consider the following criteria:

24 (1) Nature and severity of the act(s) or offense(s).

25 (2) Total criminal record.

26 (3) The time that has elapsed since commission of the act(s) or offense(s).

27 (4) Whether the licensee has complied with any terms of parole, probation,  
28 restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section  
1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

## 29 COSTS

30 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
31 administrative law judge to direct a licensee found to have committed a violation or violations of

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1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
2 enforcement of the case.

3 FIRST CAUSE FOR DISCIPLINE

4 (June 5, 2007 Criminal Conviction for Trespass and Disturbing the Peace on March 8, 2007)

5 14. Respondent is subject to disciplinary action under Code sections 490 and 2761(f) in  
6 that he was convicted of a crime substantially related to the qualifications, functions, and duties of  
7 a registered nurse. The circumstances are as follows:

8 15. On or about June 5, 2007, in a criminal proceeding entitled *People of the State of*  
9 *California v. Mark Weston Moffatt*, in the Riverside County Superior Court, Case No.  
10 INM176293, Respondent was convicted on his plea of guilty to violating Penal Code section  
11 602(m) (trespass), a misdemeanor and Penal Code section 415(2) (disturbing the peace), a  
12 misdemeanor.

13 16. On or about June 5, 2007, at sentencing, Respondent was placed on summary  
14 probation for two years, ordered to stay 100 yards away from Demuth Park in Palm Springs and  
15 ordered to pay court costs in the amount of \$55, pay \$100 in restitution and pay fines of \$465.  
16 The charge for a violation of Penal Code section 314(l) (indecent exposure) was dismissed in the  
17 interest of justice as part of Respondent's guilty plea.

18 17. The circumstances that led to the conviction were that on or about March 8, 2007,  
19 while Respondent was seated in the first toilet stall in the men's restroom at Demuth Park in Palm  
20 Springs, California, he gestered to a plain clothes police officer to come over to him and when the  
21 officer approached Respondent, Respondent began masturbating and exposed his penis and  
22 genitals to the officer. Respondent then told the officer "Let me see yours." Respondent was  
23 arrested and charged with a violation of Penal Code section 314(l) (lewd and indecent exposure),  
24 a misdemeanor.

25 SECOND CAUSE FOR DISCIPLINE

26 (Unprofessional Conduct)

27 18. Respondent is subject to disciplinary action under Code section 2761(a) for  
28 unprofessional conduct in that he exposed himself and was masturbating in a public place. The

1 circumstances are set forth in paragraph 17 above and are incorporated herein as though fully set  
2 forth.

3 PRAYER

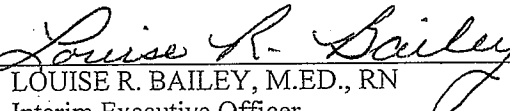
4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
5 and that following the hearing, the Board of Registered Nursing issue a decision:

6 1. Revoking or suspending Registered Nursing License Number RN 356612, issued to  
7 Mark Weston Moffatt;

8 2. Ordering Mark Weston Moffatt to pay the Board of Registered Nursing the  
9 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
10 Professions Code section 125.3; and

11 3. Taking such other and further action as deemed necessary and proper.

12  
13 DATED: 2/16/10

  
LOUISE R. BAILEY, M.ED., RN  
Interim Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

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